



**Gikonyo & 14 others v Nairobi Land Commission & 8 others; Chief Lands Registrar & another (Interested Parties) (Environment & Land Petition 9 of 2019) [2025] KEELC 1302 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1302 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT & LAND PETITION 9 OF 2019**  
**AA OMOLLO, J**  
**MARCH 13, 2025**

**BETWEEN**

**PETER MARIRA GIKONYO AND 14 OTHERS ..... PETITIONER**

**AND**

**NAIROBI LAND COMMISSION AND 8 OTHERS ..... RESPONDENT**

**AND**

**THE CHIEF LANDS REGISTRAR ..... INTERESTED PARTY**

**NAIROBI CITY COUNTY ..... INTERESTED PARTY**

**RULING**

1. The 8<sup>th</sup> Respondent/Applicant filed the present notice of motion application dated 11<sup>th</sup> November 2024 under the provisions of order 40 of the Civil Procedure Rules. It was supported by grounds listed on its face and on the affidavit sworn on the same date by Joseph Mwangi Karanja the 8<sup>th</sup> Respondent’s director. The Applicant is seeking to be granted the following orders;
  - a. Spent
  - b. Spent
  - c. That the honorable Court be pleased to issue a temporary injunction against the 2<sup>nd</sup> Petitioner /Respondent by themselves, their agents, servants and/or assigns or any other person working under their directions and command from entering, trespassing, evicting, damaging, destroying, carting away or constructing any structures and materials found on the suit property simultaneously referred to as L.R Nairobi Block 107/1118-1134 and L.R Nairobi Block 163 pending hearing and determination of this suit.



- d. That in the alternative, the honourable court be pleased to issue an order of status quo in respect of the suit property and bar any of the parties herein from carting away, destroying, demolishing or engaging in any construction activity on the suit property pending the hearing and determination of this suit.
  - e. That the costs of this Application be in the cause.
  - f. That this honourable court be pleased to grant any other orders and relief it deems just and expedient in the circumstances.
  - g. That the cost of this application be provided for.
2. The Applicant pleads that on August 20, 2019, this Court issued an order that restrained the 8<sup>th</sup> respondent, along with its directors, agents, servants, and employees, from unlawfully entering, taking over possession, and or constructing structures on the property known as L.R Nairobi Block 107/1118-1134. The order, issued on August 15, 2019, was confirmed on October 29, 2019, and was extended to remain in force until the hearing and determination of the main suit.
  3. The Petitioners were required to maintain the status quo, while the Respondents were barred from accessing the property. However, the 2<sup>nd</sup> petitioner/respondent has violated this order by entering the property, demolishing existing structures, and constructing a new one-story building, with the assistance of armed individuals providing security and despite reporting to the police, no action has been taken.
  4. The Applicant stated that the actions of the 2<sup>nd</sup> petitioner/respondent are viewed as an attempt to change the status and structure of the suit property before the court hears and determines the case, a blatant disregard for the court's orders, which are to be followed unless appealed or set aside. The applicant thus urges the court to address the issue urgently to prevent further unlawful activities by the 2<sup>nd</sup> petitioner/respondent and their associates, emphasizing that these actions are undermining the justice process and violating the court's orders.
  5. In opposition to the motion, the 2<sup>nd</sup> Petitioner filed a replying affidavit sworn by Michael Thiong'o Kinyanjui on 15<sup>th</sup> December 2024 deposing that the application is misconceived. That the applicant has misconstrued the orders of 20.8.2019 by Hon. Justice Okong'o which were framed as follows;
    1. That the Notice of motion dated 15<sup>th</sup> August 2019 is urgent.
    2. That the same be served for hearing inter-partes on 29<sup>th</sup> October, 2019.
    3. That until then on a temporary basis, the 8<sup>th</sup> Respondent be and is hereby restrained from either by themselves, directors, agents, servants, employees or otherwise howsoever from entering, unlawfully acquiring, taking over possession and constructing structures on all that properties known as land LR Nos. Nairobi Umoja Block 107/1118-1134.
  6. The Respondent avers that the Applicant is in contradiction to admit that the orders in subject barred them from accessing the property and on the other hand pray for orders against the 2<sup>nd</sup> Petitioner from entering, trespassing, evicting, damaging, destroying, carting away or constructing. He further deposes that the allegation that the 2<sup>nd</sup> Petitioner is engaging in construction at the suit property does not reflect the situation on the ground and that the photos annexed JK3 are for a church that was already built on Block 107/1126 and it is only the roofing that was being replaced after the original one was destroyed by heavy rains.



7. He stated further that when he appeared in court on 20/11/2024, counsel for the Applicant misrepresented to court that the 2<sup>nd</sup> Petitioner was building and that the structure had reached third floor whereas the church is not a storey building. That they misconstrued the orders by stating that the 2<sup>nd</sup> Petitioners were to maintain the status quo appertaining at the time of issuance of the orders noting that at the time, they applied for the orders, they had constructed permanent structures in the suit properties.
8. That they applied for the orders to protect their investments and to specifically bar the 8<sup>th</sup> Respondent from accessing the properties since they often invaded the already constructed structures on the properties. That the buildings are inhabited by different persons and require regular maintenance for instance in Nairobi/Block 107/1134, for instance, Vision Stars Academy (owned by the 10<sup>th</sup> Petitioner) which he started constructing from 2010 and has been in operation since then, but obtained a changer of user in 2014.
9. The 2<sup>nd</sup> Petitioner contended that if the orders sought were to issue, they would frustrate the fair implementation of the orders issued on 24/9/2019 and the court would be sitting on its own appeal. That the 8<sup>th</sup> Respondent has not established any proprietary interest in the suit properties to warrant issuance of the orders sought.
10. The 2<sup>nd</sup> Petitioner added that their properties are distinct from those of Nairobi Block 163 but is privy to orders issued on 3/3/2022 in ELC Civil suit No. E038 of 2022 on facts similar to this case whereupon the Court ordered that a survey be conducted to ascertain the true and accurate physical location of Nairobi Block 107 vis a vis Blocks 166 and 163. That the report stated that they do not encroach on each other as they are distinct.
11. The 2<sup>nd</sup> Petitioner stated that the application reeks of mischief as the same was filed almost at the same time when a member of the 8<sup>th</sup> Respondent, Maureen Njeri Kahenya sued him in Milimani Chief Magistrate's MC ELC No. E542 of 2024 seeking a declaration that the 8<sup>th</sup> Respondent is the registered owner of LR.No. 11379/3 despite these proceedings.

### **Submissions**

12. In support of the motion, the Applicants filed submissions dated 19<sup>th</sup> February 2025 and in opposition, Petitioners/Respondents filed submissions dated 4<sup>th</sup> March 2025.
13. The Applicants submit that the main issues for determination revolve around whether the interim orders issued on August 20, 2019, entitle the petitioners to engage in construction activities on the disputed property, and whether the 8<sup>th</sup> respondent is entitled to the orders sought in their current application.
14. The 8<sup>th</sup> respondent argues that the court's orders, issued in 2019, restrained them from engaging in construction on the property, but the petitioners have continued construction activities in violation of those orders. That these actions should be stopped to preserve the status quo, as the construction will cause irreparable harm, especially given the 8<sup>th</sup> respondent's claim of ownership over the property.
15. They argue that the petitioners' ongoing construction is a direct contravention of the court's orders, which were intended to preserve the status of the property pending the outcome of the case. The 8<sup>th</sup> respondent further asserts that there is a high probability of success on the issue of ownership and that the petitioners have no right to engage in construction on the property during the pendency of the case. Thus it seeks the court's intervention to halt the construction activities and preserve the current state of affairs until the matter is fully resolved.



16. That given the serious nature of the competing claims and the fact that monetary compensation would not be adequate to remedy the situation, the 8<sup>th</sup> respondent argues that the court should grant the orders sought to preserve the status quo and prevent any irreversible changes to the property before the case is heard and determined. In support of their application, the 8<sup>th</sup> Respondent cited the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* (2003) eKLR.
17. On the other hand, the 2<sup>nd</sup> petitioner submits that the primary issues for determination are whether the 8<sup>th</sup> Respondent has established any basis for the reliefs sought and who should bear the costs of the application. It is urged for the Petitioners that the 8<sup>th</sup> Respondent has not laid a proper foundation for the issuance of the requested orders and that the prayers sought being injunctive reliefs, they have not established a prima facie case citing *Giella vs. Cassman Brown*.
18. That the 8<sup>th</sup> Respondent has never been in occupation /possession of the suit properties and that their basis for the injunctive reliefs as per paragraphs 12 and 13 of their submissions dated 19.2.2025 is that they have title documents to show that they are registered owners of L.R 11379/3 and further that they have a survey plan no 86048 which delineates the boundaries of the said L.R 11379/3.
19. The 2<sup>nd</sup> Petitioners submitted that however, in recent decision of this Court (differently constituted) in Nairobi ELC Civil Suit No. E277 of 2021: *Jacob Ngondoki Arimi & 2 Others vs. Kiambu Dandora Farmers Co. Ltd & 15 Others* (Judgment delivered on 21.1.2025) the Court held at paragraphs 245 to 284 that the title in respect of L. R. No. 11379/3, which is claimed by the 8<sup>th</sup> Respondent does not legally exist because the same was compulsorily acquired from the 8<sup>th</sup> Respondent by the Government and various gazette notices issued to that effect.
20. Relying on the case of *William Odhiambo Oduol vs. Independent Electoral & Boundaries Commission & 2 Others* [2013] eKLR which cited with approval the decision in *Republic vs. Barisa Wayu Matuguda* [2011] eKLR where it was held that section 106B (4) of the *Evidence Act* makes it abundantly clear that for electronic evidence to be deemed admissible it must be accompanied by a certificate in terms of section 106B (4), the 2<sup>nd</sup> Petitioners stated that there is no evidence presented by the 8<sup>th</sup> Respondent to be considered by this court to provide sufficient evidence to support their case.
21. Further, they submitted that the 8<sup>th</sup> Respondent cannot use Article 159(2)(d) of *the Constitution* to bypass the mandatory procedural requirements, as courts are expected to uphold statutory rules and cannot disregard them to favor one party over the other and in support cited the case of *Raila Odinga vs. the Independent Electoral and Boundaries Commission and 3 others* [2013] eKLR and *Nicholas Kiptoo Arap Korir Salat vs. the Independent Electoral and Boundaries Commission and 6 Others* [2013] eKLR.
22. Further, the 2<sup>nd</sup> Petitioners argue that the 8<sup>th</sup> Respondent's request for orders is not effective, as there are already existing orders against the 8<sup>th</sup> Respondent preventing them from accessing the properties.

### **Analysis and determination:**

23. I have carefully considered the grounds in support of the application, the supporting affidavit, the replying affidavit, the annexures thereto, and the submissions filed by the parties. The issue is whether the orders of injunction sought should be granted to maintain status quo of the suit property by preventing the 2<sup>nd</sup> Petitioner from doing any construction works pending determination of the dispute. It is their case that the 2<sup>nd</sup> Petitioner's actions are an attempt to change the status and structure of the suit property before the court hears and determines the case which is likely to prejudice their claim to the suit property.



24. The grounds for review arise from the provisions Order 45(1) of the Civil Procedure Rules to include, discovery of new and important matter/evidence which after the exercise of due diligence, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. Upon reviewing the application, it is clear that the Applicant has not specifically pleaded the ground upon which they rely. However, the grounds outlined and argued in the application point towards "any other sufficient reason" as the basis for the application.
25. In the case of *Shanzu Investments Limited v Commissioner for Lands (Civil Appeal No 100 of 1993)* the Court of Appeal held that:-
- “Any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the court by section 80 of the *civil procedure act*: and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous.”
26. The 2<sup>nd</sup> Petitioner does not deny claims regarding ongoing construction activities on the suit property but justifies the activity that the said construction works in question are only renovations and general maintenance of the suit property. Additionally, the 2<sup>nd</sup> Petitioner contends that they are in lawful occupation and possession of the suit property, having obtained the necessary permits from the relevant authorities prior to the filing of the instant suit.
27. There is no dispute that there are temporary orders of injunction in place favouring the petitioners. The Petitioners argument that their activities (of constructing and or repairing) are within orders of this court is misleading since the orders issued restrained the Respondents from interfering with their possession of the land. The orders did not in any way authorise them to build or carry out activities that would breach the interests of the opposing party neither did the orders determine who the rightful owner of the suit property is.
28. If the Petitioners are stating that the issue of ownership has been determine in ELC Civil Suit No. E277 of 2021, the best they can do is withdraw their Petition. However, as long as their case remains pending, the applications filed within it has to be determined on its merits.
29. It is my considered view that the Applicant has demonstrated a prima facie case to the extent that there is evidence of alleged activities. Whether or not the 2<sup>nd</sup> Petitioner has approvals from the relevant bodies is neither here nor there as the result of the impugned activities may result in changing status of the existing structures. The Court of Appeal decision in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR* states as follows: -
- “We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation.”
30. The 2<sup>nd</sup> Petitioner’s argument that issuance of the orders sought by the 8<sup>th</sup> Respondent would amount to sitting on its own appeal is not true as this court had not issued any interim injunction as against the Petitioners. Secondly, the issues now complained by the 8<sup>th</sup> Respondent are new and did not arise when the application by the Petitioners was heard and determined. The balance of convenience tilts in favour of preserving the suit property as is where none of the parties is allowed to carry out new developments



that were not in place when the initial orders were granted to the Petitioners. That would not take away the physical possession and non-interference orders being enjoyed by the Petitioners.

31. In *Charter House Investments Ltd. V Simon K. Sang & 3 Others* (2010) eKLR, the Court of Appeal stated: -

“Injunction is an equitable and discretionary remedy, given when the subject matter of the case before the Court requires protection and maintenance of the status quo. The award of a temporary injunction by Courts of equity has never been regarded as a matter of right even where irreparable injury is likely to result to the applicant. It is a matter of sound judicial discretion, in the exercise of which the Court balances the convenience of the parties and possible injuries to them and to third parties.”

32. Reviewing all the facts and law availed in the circumstances, it is my considered opinion and I so hold that the 8<sup>th</sup> Respondent’s application dated 11<sup>th</sup> November, 2024 is allowed in terms of prayer (d) of the motion thus;

- a. That the honourable court is pleased to issue an order of temporary injunction barring the Petitioners and the Respondents and their representatives from destroying, demolishing or engaging in any construction activity on the suit property pending the hearing and determination of this suit.
- b. The costs of the application to the 8<sup>th</sup> Respondent/Applicant.

**DATED, SIGNED & DELIVERED AT NAIROBI THIS 13<sup>TH</sup> MARCH, 2025.**

**A. OMOLLO**

**JUDGE**

